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REPRESENTATION

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- 28. Decisions.

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AUTHORITY: 41 U.S.C. 601-613; 42 U.S.C. 3535(d).

Subpart A—Department of Housing and Urban Development Board of Contract Appeals

SOURCE: 50 FR 45911, Nov. 5, 1985, unless otherwise noted.

§ 20.1 Scope of part.

This part establishes a Board of Contract Appeals, sets forth its function, policies and procedures regarding matters to be considered by the Board, and prescribes the rules of the Board.

§ 20.2 Establishment of Board.

There is established in the Office of the Secretary, the Housing and Urban Development Board of Contract Appeals ("the Board").

§ 20.3 Organization and location of the Board.

(a) *Location.* The Board's mailing address is: Board of Contract Appeals, U.S. Department of Housing and Urban Development, Room 2131, 451 Seventh Street, S.W., Washington, DC 20410-0001. For items requiring non-postal delivery, the Board is located in Room 3229, 1201 Constitution Ave., N.W. 20001. The telephone number of the Board is

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(202) 927-5110. (This is not a toll-free number.) For learning- or speech-impaired persons, this number may be accessed via TTY by contacting the Federal Information Relay Service at 1-800-877-8339. The facsimile number is (202) 927-6257.

(b) *Organization.* The Board shall be comprised of a Chief Administrative Judge, who shall be the Chair, an Administrative Judge, who shall be the Vice-Chair, and such other Administrative Judges as may be appointed by the Secretary. All members of the Board shall be attorneys at law duly licensed by any State, commonwealth, territory, or the District of Columbia. All members shall be selected and appointed to serve in accordance with section 8(b)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 608(b)(1)). Except as otherwise provided, appeals are assigned to a panel of at least three members who decide the case by a majority vote. The Chair shall assign one member of the panel to preside over the appeal and to conduct necessary conferences and hearings, supervise discovery and the development of the record for the Board, and to make such procedural determinations as are necessary to the proper disposition of the appeal.

[50 FR 45911, Nov. 5, 1985, as amended at 61 FR 13280, Mar. 26, 1996]

§ 20.4 Jurisdiction of the Board.

(a) *Contract appeals.* The Board shall consider and determine appeals from decisions of contracting officers under the Contract Disputes Act of 1978 (41 U.S.C. 601-613) relating to contracts entered into by (1) the Department of Housing and Urban Development or (2) any other executive agency when that agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal.

(b) *Other matters.* The Board or its individual members shall have jurisdiction over other matters assigned to it by the Secretary or designee. Determinations in other matters shall have the finality provided by the applicable statute, regulation or agreement.

§ 20.5 Board powers.

(a) *Board powers.* The Board shall employ support personnel, as needed, and

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shall have all powers necessary and incident to the proper performance of the duties assigned to it.

(b) *Disqualification.* No Administrative Judge may act for the Board or participate in a decision if, prior to the time the appeal was filed, he or she had participated in the matter in any manner on behalf of an interested party.

Subpart B—Rules of the Department of Housing and Urban Development Board of Contract Appeals

SOURCE: 50 FR 45912, Nov. 5, 1985, unless otherwise noted.

§ 20.10 Rules.

(a) These rules govern the procedure in all matters before the Department of Housing and Urban Development Board of Contract Appeals, unless otherwise provided by applicable law or regulation. The Federal Rules of Civil Procedure may be applied where procedures are not otherwise provided in these rules. For applications and proceedings involving award of attorney fees and other expenses, the rules set forth in 24 CFR part 14 shall apply.

(b) *Filing Requirements.* A party shall file with the Board one original of any pleading or motion. That party shall simultaneously serve upon the other party of record one copy of that pleading or motion filed with the Board. Filings may be transmitted to the Board via facsimile. However, the original of any document transmitted to the Board by facsimile shall simultaneously be mailed to the Board.

(c) *Alternative Disputes Resolution.* The Administrative Dispute Resolution Act authorizes and encourages Federal agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes. With the mutual consent of the parties, the Board may assist in the resolution of disputes by Alternative Dispute Resolution (ADR) procedures. The utilization of ADR procedures shall not relieve the parties from the filing requirements or other orders of the Board relating to a contract appeal duly docketed before the Board.

(d) *Equal Access to Justice Act.* The Equal Access to Justice Act provides that agencies which conduct adversary adjudications “shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust.” 5 U.S.C. § 504. Prevailing parties in proceedings before the Board may apply for an award under the Act following the issuance by the Board of its final decision in the appeal.

PRELIMINARY PROCEDURES

Rule 1. Appeals, how taken.

(a) *General.* Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a final written decision of the contracting officer.

(b) *Contracting officer's failure to act—claim of \$100,000 or less.* Where the contractor has submitted a claim of \$100,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not issued the decision, the contractor may file a notice of appeal as provided in paragraph (a) of this section, citing the failure of the contracting officer to issue a decision.

(c) *Contracting officer's failure to act—claim in excess of \$100,000.* Where the contractor has submitted a claim in excess of \$100,000 to the contracting officer and the contracting officer has failed, within 60 days of submission of the claim, to issue a final written decision, or to advise the contractor of a date when the final written decision will be issued, the contractor may file a notice of appeal as provided in paragraph (a) of this section, citing the failure to issue a decision.

(d) *Unreasonable delay by contracting officer.* A contractor may request the Board to direct a contracting officer to issue a final written decision within a specified period of time, as determined by the Board, in the event of an unreasonable delay on the part of the contracting officer.

(e) *Stay of proceedings.* Upon docketing of appeals filed under paragraph (b) or (c) of this section, the Board may stay further proceedings pending issuance of a final decision by the contracting officer within the period of time determined by the Board.

Rule 2. Notice of appeal, contents of.

A notice of appeal shall indicate that an appeal is being taken and shall identify the